

# Exhibit 134



Making San Francisco Bay Better

February 24, 2003

Todd J. Dworman,  
T. J. Enterprises, LLC,  
and Waterpark Lofts, LLC  
524 Fourth Avenue  
San Francisco, California 94118-3927

**SUBJECT:** Commission Cease and Desist and Civil Penalty Order  
No. CCD 3-02, Todd J. Dworman, TJ Enterprises LLC,  
and Waterpark Lofts, LLC  
**Effective Date:** February 24, 2003

Ladies and Gentlemen:

**I. Settlement**

The San Francisco Bay Conservation and Development Commission ("the Commission" or "BCDC") has been investigating an enforcement action ("the action") against Todd J. Dworman, TJ Enterprises LLC, and Waterpark Lofts LLC (collectively referred to as "the respondents"). The Commission and the respondents now want to settle and to resolve the matters raised by the action and to enter into this settlement and stipulated cease and desist and civil penalty order solely to avoid the delay, expense, and uncertainty of result that would be involved if the Commission were to initiate a formal enforcement action. In doing so, the respondents admit no wrongdoing or liability with regard to the matters alleged by the Commission.

**II. Stipulated Cease and Desist Order**

Therefore, pursuant to California Government Code Sections 66638, the Commission hereby orders and respondents hereby agree to all of the following:

- A. Within 60 days of the issuance of this order, respondents shall commence and complete the construction of a public access deck and all other public access improvements as shown on plans drawn by Ralph Alexander and entitled "Waterpark Lofts/TJ Enterprises LLC Landscape Plan" dated 04/23/02, Sheet L-1 ("the approved plans") consistent with subsequent staff approvals.

COMMISSION CEASE AND DESIST AND  
CIVIL PENALTY ORDER NO. CCD 3-02

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- B. Within 10 days of the issuance of this order, if not already having done so, respondents shall submit an application to amend Permit No. M99-4 to make the permit consistent with this order.
- C. Within 5 days of the issuance of an amended Permit No. M99-4, respondents shall record the amended permit with Alameda County.
- D. Within 30 days of the completion of the public access deck required by Paragraph I-A of this order, respondents shall submit a public access restriction agreement in the form required by the Commission.
- E. Within 10 days of the approval of the public access restriction agreement required by Paragraph I-E, respondents shall record the public access restriction with Alameda County.
- F. Within 30 days of the issuance of this order, respondents shall submit and obtain the BCDC's staff approval of all plans that have not been already submitted and approved; and
- G. Respondents shall pay \$40,000 in lieu public access fees to such account or entity as the Executive Director or Commission shall designate as follows: \$20,000 on the sale of the 12<sup>th</sup> unit and \$20,000 on the sale of the 20<sup>th</sup> unit.

**III. Stipulated Civil Penalty Order**

**A. Penalty.** Pursuant to California Government Code Section 66641.5(d) et seq., respondents shall pay a civil penalty of \$90,000, all but \$40,000 of which shall be stayed if respondents comply fully with the terms and conditions of this order and of Permit No. M99-4 as it may be amended. Payments of the penalty shall be made by the submittal of a cashiers check payable to the San Francisco Bay Conservation and Development Commission, Bay Fill Cleanup and Abatement Fund, based on the following schedule:

**B. Schedule of Payments.** On February 3, 2003, the respondents paid \$20,000 in partial performance of the civil penalty obligations described in this order. Respondents shall pay an additional \$20,000 on the close of unit #16, and \$10,000 on the close of unit #24.

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**C. Sale of Additional Units.** If Mr. Dworman complies with all the terms and conditions of this order and the amended permit, including the payment of the in lieu public access fee and the civil penalty in a timely manner, Mr. Dworman may continue to sell the remaining units #12 through #27.

**D. Additional Payment of Stayed Penalty If Respondents Violate Order** If respondents violate any term or condition of this order or of the amended permit, respondents shall submit a cashiers check in the amount of \$40,000 payable to the San Francisco Bay Conservation and Development Commission, Bay Fill Cleanup and Abatement Fund to the Commission no later than 30 days from receipt of notice from the Commission staff that respondents have violated one or more term or condition of the order or the amended permit.

#### **IV. Findings**

This stipulated order is based on the following findings:

- A. Waterpark Lofts LLC owns property located at 2875 Glascoc Street, Oakland, California, along the shoreline of the Oakland/Alameda Estuary south of the Park Street Bridge ("the site").
- B. Todd J. Dworman controls TJ Enterprises LLC and Waterpark Lofts, LLC.
- C. In 1999, Mr. Dworman applied for and in July 2000, the Commission's Executive Director issued Permit No. M99-4 to authorize the construction and use of three two-story buildings on the site. The project consists of 27 live-work units and associated amenities, including public access from Glascoc Street through the middle of the project to the shoreline and along the shoreline and on a wooden deck that Mr. Dworman would construct along the shoreline and extending into the estuary.
- D. Special Condition II-B of the permit requires Mr. Dworman to submit final site, grading, demolition, architectural, and landscaping plans prior to the commencement of construction.
- E. Mr. Dworman submitted and staff approved architectural plans. Mr. Dworman also submitted grading plans for the site except for the shoreline area, which staff approved. The staff alleges that Mr. Dworman did not submit final site plans, grading plans for the shoreline area, demolition plans, or landscaping plans.

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- F. Special Conditions II-C-1 and II-C-2 of the permit requires Mr. Dworman to submit and the staff to approve a document that permanently restricts for public access purposes approximately 10,545 square feet of the site, including shoreline and a deck that Mr. Dworman must construct along the shoreline and into the Estuary. Special Condition II-C-3 to the permit requires Mr. Dworman to record the restriction document with Alameda County within 30 days of the staff's approval of the document.
- G. The staff alleges that Mr. Dworman never submitted such a document.
- H. Special Condition II-D of the permit requires Mr. Dworman to record the permit with Alameda County within 30 days of the issuance of the permit and to provide proof of such recordation to the staff within 30 days of the recording.
- I. The staff alleges that Mr. Dworman did not record the permit.
- J. Special Condition II-C-1 to the permit requires that Mr. Dworman maintain a minimum of 29 feet between the buildings and the top of the bank.
- K. The staff alleges that Mr. Dworman built the two buildings located closest to the shoreline such that they are approximately 24 feet from the top of the bank. Mr. Dworman denies this and contends that the buildings as constructed provide the required minimum distance of 29 feet between the buildings and the top of the bank. The staff alleges that if this is correct, it is only because Mr. Dworman is responsible for the placement of dirt, concrete, and construction debris along the shoreline, the effect of which is to extend the shoreline several feet further into the estuary.
- L. Mr. Dworman and the staff have worked since September 2001 to try to resolve this matter.
- M. The staff also alleges that subsequent to the commencement of the staff's investigation into this matter and its attempts to resolve this matter by negotiation with Mr. Dworman, Mr. Dworman constructed an entrance gate

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to the project site from Glascock Street in a location approximately 10 feet from the location required by the permit and thereafter submitted a plan that showed the gate constructed where required by the permit, not where actually constructed.

- N. Construction of all remaining public access improvements in strict compliance with the approved plans will resolve any and all problems with public access improvements at the site.
- O. The Commission concludes that the proposed order is a fair and appropriate resolution of this matter because it provides equal public access benefits, resolves the other alleged violations, and imposes a reasonable civil penalty for the alleged violations.

**V. Disclaimer of Effect of Order on Private Rights or Public Regulations**

This order shall have no effect on any rights, duties, or obligations established by private agreement or by the laws and regulations of other public bodies.

**VI. Disclaimer of Recognition of Property Rights**

This order shall not constitute any recognition of property rights.

**VII. Waiver of Right To Appeal and To Seek Damages Against the Commission**

By stipulating to the issuance of this order, the respondents waive any and all right to appeal the issuance of this order in any way, including the filing of an action in Superior Court of the State of California and also waive any and all right to seek or obtain any damages from the State of California, the Commission, members of the Commission, Commission employees, and any other state employees based on any claim or cause of action alleged to have arisen from this enforcement case.

**VIII. Possible Court Action For Noncompliance**

Strict compliance with this order is required. Failure to comply strictly with any and all terms and conditions of this order can result in the Commission filing a lawsuit against the parties who fail to comply with this order. Such lawsuit may seek either injunctive relief to enforce this order, civil penalties of up to \$6,000 per day for each day that the order is not complied with, or both.

COMMISSION CEASE AND DESIST AND  
CIVIL PENALTY ORDER NO. CCD 3-02

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Executed at San Francisco, California, on behalf of the San Francisco Bay  
Conservation and Development Commission on the date first written above.



WILL TRAVIS  
Executive Director  
San Francisco Bay Conservation  
and Development Commission

WT/JTS/mm

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board  
Environmental Protection Agency, Attn: Mike Monroe  
U. S. Fish and Wildlife Service, Attn: Field Supervisor



Making San Francisco Bay Better

Issued BCDC

Commission Stipulated Cease  
and Desist and Civil Penalty  
Order No. CCD 1-06

August 25, 2006

K.M.C. Inc.  
167 Trinidad Drive  
Tiburon, California 94920

**ATTENTION:** Thomas J. Moseley, Vice-President

**AND**

Thomas J. Moseley  
167 Trinidad Drive  
Tiburon, California 94920

**SUBJECT:** Proposed Commission Stipulated Cease and Desist and Civil Penalty Order  
No. CCD 1-06; Thomas J. Moseley and K.M.C. Inc.  
**Effective Date:** August 17, 2006

Ladies and Gentlemen:

### **I. Settlement**

The San Francisco Bay Conservation and Development Commission ("the Commission" or "BCDC") has been investigating an enforcement action (the "action") against Thomas J. Moseley and K.M.C. Inc. (collectively referred to as the "respondents"). The Commission and the respondents now want to settle and to resolve the matters raised by the action and to enter into this settlement and stipulate to the issuance of this cease and desist and civil penalty order (the "Order") solely to avoid the delay, expense and uncertainty of result that would be involved if the Commission were to initiate a formal enforcement action. In doing so, the respondents admit no wrongdoing or liability with regard to the matters alleged by the Commission staff.

### **II. Stipulated Cease and Desist Order**

Therefore, pursuant to California Government Code Section 66638 et. seq., the Commission hereby orders, and respondents hereby agree to comply with all terms and conditions of BCDC Permit No. 6-91, as amended through August 24, 2006 (Amendment No. 8), attached hereto as Exhibit A to this Order.



### III. Civil Penalty Order

**A. Penalty.** Pursuant to California Government Code Sections 66641.5 through 66641.9, the Commission hereby orders the respondents to pay \$37,400 as a civil penalty, \$13,500 of which shall be due within 30 days after the effective date of this Order, and \$23,900 due if respondents do not comply with the terms and conditions of this Order and of BCDC Permit No. 6-91. Therefore, the Commission hereby orders the respondents to submit, within 30 days after the effective date of this Order, a cashier's check in the amount of \$13,500. The cashier's check shall be made payable to the San Francisco Bay Conservation and Development Commission - Bay Fill Clean-up and Abatement Fund.

**B. Additional Payment of Stayed Penalty if Respondents Violate Order.** If respondents fail to comply with any term or condition of this Order after the Order is executed, respondents shall submit a cashier's check in the amount of \$23,900 payable to the San Francisco Bay Conservation and Development - Bay Fill Clean-up and Abatement Fund no later than 30 days from receipt of notice from the Executive Director describing how the respondents have failed to comply with one or more terms or conditions of the Order. The Executive Director shall be responsible for determining whether or not respondents have complied with this Order and whether any violation is of such a nature that it justifies additional payment of the stayed penalty. In making this determination, the Executive Director shall consult with the Commission's Chair and the respondents shall be provided an opportunity to present their views if they believe a violation has not taken place or the violation is insignificant and does not justify additional payment of the stayed penalty. If, after respondents have presented their case, the Executive Director and Commission Chair continue to agree that a violation justifies additional payment of the stayed penalty, the respondents may challenge this determination by filing an action in court.

### IV. Findings

This Order is issued based on the following findings and the relevant Commission files including BCDC Permit File No. 6-91, and BCDC Enforcement File No. 05-11, each of which are incorporated herein by reference. Respondents neither admit nor deny these findings:

A. K.M.C. Inc. owns property located on the north peninsula at Paradise Cay, Marin County, California, otherwise known as the Paradise Cay Marina ("the site").

B. The site was formerly owned by the Pullman Building Company ("Pullman").

C. Mr. Thomas J. Moseley is the Vice-President of K.M.C. Inc. and is authorized to represent K.M.C. Inc.

D. On August 26, 1992, the Commission issued BCDC Permit No. 6-91 to Pullman authorizing 157 existing berths (after-the-fact), the removal of the existing 157 berths and construction of up to 307 new berths in a phased manner, work along the breakwaters, and construction of eleven single-family residences, a harbor master's office, a yacht clubhouse, a parking lot, two parks and various associated public access improvements at the site ("the project"). The original permit requires work to commence no later than August 20, 1994, and to be completed by August 20, 1999.

E. On July 14, 1999, the Commission staff approved an assignment of the rights and obligations of BCDC Permit No. 6-91 from Pullman to K.M.C. Inc.

F. Since the issuance of BCDC Permit No. 6-91, the Commission staff has written to and communicated with Pullman and K.M.C. Inc. on several occasions regarding potential violations of the permit, including failure to complete construction and for the unauthorized storage and use of structures and materials within the Commission's jurisdiction. Enforcement letters were sent to either Pullman or K.M.C. Inc. for these alleged violations on May 31, 1994, February 8, 1995, November 2, 1999, July 22, 2005, and October 12, 2005.

G. Alleged violations have either been addressed in the past or will be resolved through the issuance of Amendment No. Eight to Permit No. 6-91 and this Order.

H. Since the issuance of BCDC Permit No. 6-91, Pullman and K.M.C. Inc. have requested and been granted four time extensions for the completion of the project (Amendment Nos. One, Three, Four, and Six).

I. The current permit, as amended through February 1, 2006, requires the project to be completed by June 30, 2007 (Amendment No. Seven), with portions of the project to be completed at an earlier date.

J. Special Condition II-E of the permit requires a second waste pump-out facility to be installed by January 1, 2000.

K. The Commission staff alleges that K.M.C. Inc. did not install a second waste pump-out facility by January 1, 2000. The Commission staff believes that this alleged violation will be resolved through the issuance of Amendment No. Eight to Permit No. 6-91 and this Order.

L. Special Condition II-B-4 of the permit requires the permittees to have installed certain public access improvements by September 30, 2000, with the exception of the public access improvements within the 1.3-acre State Lands Commission park which shall be installed by July 1, 2001.

M. The Commission staff alleges that K.M.C. Inc. did not install all of the required public access improvements by the deadlines required in the permit, including a bicycle lane, benches, public access parking spaces, paving along the shoreline path, trash containers, and landscaping.

N. K.M.C. Inc. has subsequently resolved the alleged violations to public access improvements cited by the Commission staff, with the exception of the paving of the northern shoreline path with decomposed granite, which will be resolved through the issuance of Amendment No. Eight to Permit No. 6-91 and this Order.

O. Special Condition II-B-5 of the permit requires maintenance of the public access areas and improvements.

P. The Commission staff alleges that K.M.C. Inc. failed to properly maintain the public access areas and improvements, as required by the permit, including failure to maintain landscaping and plants, and failure to maintain the area free and clear of trash.

Q. K.M.C. Inc. has subsequently resolved the alleged violation for maintenance of the public access areas and improvements.

R. Under California Government Code Section 66632(a), anyone who wants to place fill, extract materials worth more than \$20, or make any substantial change in use in any land, water, or structure within the Commission's jurisdiction must first obtain a permit from the Commission. Failure to obtain a Commission permit before undertaking any of the foregoing work constitutes a violation of California Government Code Section 66632.

S. The Commission staff alleges that K.M.C. Inc. has illegally placed fill within the Commission's Bay jurisdiction that includes unauthorized floating docks. The Commission staff believes that this alleged violation will be resolved through the issuance of Amendment No. Eight to Permit No. 6-91 and this Order.

T. The Commission staff alleges that K.M.C. Inc. has illegally placed fill within the Commission's shoreline band jurisdiction that includes construction materials and equipment not related to the marina construction. The Commission staff believes that this alleged violation will be resolved through the issuance of Amendment No. Eight to Permit No. 6-91 and this Order.

U. Mr. Moseley and the Commission staff have worked since July, 2005 to try to resolve this matter.

V. Mr. Moseley and the Commission staff have agreed to amend Permit No. 6-91 to include interim deadlines for the total completion of the project by the deadline date of August 31, 2007, the removal of certain materials and structures from the project site, and conditions for the storage of equipment and materials at the project site, in order to address the alleged violations.

W. Mr. Moseley and the Commission staff agree that compliance with all the terms and conditions of Permit No. 6-91, as amended through August XX, 2006 (Amendment No. Eight), and the payment of the civil penalty required by this Order will resolve the alleged violations.

X. This Order is based on Permit No. 6-91, as amended through August XX, 2006 (Amendment No. Eight), a draft of which is attached hereto as Exhibit A to this Order. Any future amendments to Permit No. 6-91 that modify the deadline dates for the project shall be automatically incorporated into this Order.

Y. Further changes to this Order may be made based on any future amendments to Permit No. 6-91, to ensure that the provisions of this Order and Permit No. 6-91 are consistent.

Z. The Commission concludes that the proposed Order is a fair and appropriate resolution of this matter because it resolves the alleged violations, prevents further delay of the project, and imposes a reasonable civil penalty for the alleged violations.

#### **V. Disclaimer of Effect of Order on Private Rights of Public Regulation**

This Order shall have no effect on any rights, duties, or obligations established by private agreement or by the laws and regulations of other governmental bodies.

#### **VI. Waiver of Right to Appeal**

By stipulating to the issuance of this Order, the respondents waive any and all right to contest the issuance of this order in any manner whatsoever, including the filing of an action in Superior Court of the State of California and also waive any and all right to seek or obtain any damages from the State of California, the Commission, members of the Commission, Commission employees, and any other state employees based on any claim or cause of action alleged to have arisen from this enforcement case.

#### **VII. Possible Court Action for Noncompliance**

Strict compliance with this Order is required. Failure to comply with any and all terms and conditions of this order may result in the Commission filing a lawsuit against the parties who fail to comply with this order. Such lawsuit may seek either injunctive relief to enforce this order, civil penalties of up to \$6,000 per day for each day that the order is not complied with, or both.

Executed at San Francisco, California, on behalf of the San Francisco Bay Conservation and Development Commission on the date first above written.

  
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WILL TRAVIS  
Executive Director

WT/MY/mm

cc: U. S. Army Corps of Engineers, Attn: Regulatory Functions Branch  
San Francisco Bay Regional Water Quality Control Board, Attn: Certification Section  
Environmental Protection Agency, Attn: Mike Monroe, WTR-8  
State Lands Commission, Attn: Dave Plummer